CR360

(3)

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 26 /2009

APPELLANT : Gumanmal Chopda,
Appellant/ Defendant S/o Late Kanwarlal Chopda,
Aged about 60 years,
Occupation- Businessman,
R/o Sadar Bazar, Rajnandgaon,
Tahsil & District - Rajnandgaon.

- Versus –

RESPONDENT : Dr. Narendra Kumar Gandhi,
Respondent/ Plaintiff S/o Late Madan Mohan Gandhi,
Aged about 40 years,
Occupation – Doctor,
R/o Near Old Police Station,
Tahsil & District- Rajnandgaon.

P.R. No. 2372/09
Presented by Sushil Sadh
dated 26/2/09

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908.

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HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL NO. 26 OF 2005

GUMANMAL CHOPDA

VS.

DR.NARENDRA KUMAR GANDHI

Shri Rajeev Shrivastava and Shri I.S.Sahu, counsel for the appellant.

Shri Anand Shukla, counsel for the respondent on Caveat No. 69/2004.

ORAL ORDER
(30.8.2005)

Sunil Kumar Sinha, J.

Shri Rajeev Shrivastava and Shri I.S.Sahu, counsel for the appellant.

Shri Anand Shukla, counsel for the respondent on Caveat No. 69/2004.

Heard Shri Rajeev Shrivastava, counsel for the appellant on question of admission.

This appeal has been directed against the impugned judgment and decree dated 16.8.2004, passed in civil appeal No. 14-A/2002, arising out of the judgment and decree dated 24.10.2002 passed in C.S.No. 10-A/1998 by the Civil Judge Class-I, Link Court, Dongargarh, Rajnandgaon, District Rajnandgaon.

The facts of the case are that the plaintiff filed a suit of eviction and arrears of rent in relation to a non residential

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accommodation on the ground of bonafide requirement, described under Section 12 (1) (f) of the M.P. Accommodation Control Act, 1961 (for short 'the Act'). It was contended by the plaintiff that the rented premises given to the defendant for non resendential purpose, was required bonafide by the landlord for extension of his Nursing Home, situated near the rented premises. It was further contended that the plaintiff was having no other reasonably suitable non residential accommodation for such an extension in the city or township concerned, and his requirement was bonafide.

The defendant filed his written statement, denying the contentions of the plaintiff. Alongwith the denial of grounds of bonafide requirement, the defendant also raised a plea regarding denial of the title of the plaintiff, saying that the plaintiff is not the owner of the suit property and he cannot claim for a decree of eviction as he would not be a landlord within the meaning of Section 2 (b) of the aforesaid Act.

Learned trial Court framed various issues in this case and after recording the evidence of the parties, decreed the suit of plaintiff on both the grounds, i.e. on the ground of bonafide requirement and also on the ground of denial of title by the defendant.

Against the aforesaid judgment and decree, passed by the trial Court, the defendant filed an appeal before the lower appellate Court. The lower appellate Court dismissed the appeal of the tenant and upheld the judgment and decree passed by the trial Court. It is against this judgment and decree passed by the lower appellate Court, the tenant has filed this Second Appeal under Section 100 of the C.P.C.

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Learned counsel for the appellant submits that the Courts below committed an error of law by holding that the rented premises was bonafidely required by the landlord and the requirement under Section 12 (1) (f) of the Act was not proved in this case. He further submits that the decree for eviction on the ground of denial of title of the landlord was also not just and proper. The findings of both the Courts on both points are perverse.

I have heard learned counsel for the appellant at length and have also perused the records of the Courts below.

Undisputedly, the findings in relation to bonafide requirement and denial of title of the landlord are the findings of facts and the same have been concurrently recorded by the two Courts below. Unless a perversity in these findings are pointed out by the appellant, the same are not to be interfered by this Court under Section 100 of the C.P.C.

A bare perusal of Seciton 100 of the C.P.C. makes it clear that the scope and exercise of jurisdiction by the High Court in appeal under Section 100 is limited to the substantial questions of law, framed at the time of admission of the appeal or additional substantial questions of law framed at the later stage after recording reasons for the same. This makes it clear that the existence of substantial question of law is ***sine qua non*** for the exercise of jurisdiction under the amended provisions of Section 100 of the C.P.C. and unless such questions of law are involved, an appeal under Section 100 of the C.P.C. would not be entertained by the High Court. ***(Please see (2004) Vol. V SCC 762 - Thiagarajan and others -vs- Shri Venugopala Swamy B. Koli and others)***

As to which would constitute a substantial question of law, it has been observed by the Apex Court that " a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstances of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis". (Please see ***(2001) 3 SCC 179*** - ***Santosh Hazari -vs- Purushottam Tiwari (Deceased) by L.Rs.)***

If you examine the case of the appellant, on the above principles, it would appear that the concurrent findings recorded by both the Courts below are purely a finding of fact and no interference would be possible in the appellate jurisdiction of this Court, vested under Section 100 of the C.P.C.

I do not find any force in the arguments advanced by learned counsel for the appellant. The appeal does not involve any

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substantial question of law and the same is dismissed summarily at the motion stage itself.

At this stage, learned counsel for the appellant submits that the appellant is ready and willing to vacate the premises, but he has some personal difficulties, therefore, a time of about 1 year may be granted to him, so that the eviction may not cause any inconvenience to him.

This prayer made by learned counsel for the appellant for 1 year is vehemently opposed by the counsel for respondent who is appearing on Caveat before this Court. However, he fairly agrees for a period of 6 months from today and submits that if the appellant retains the possession for a further period of 6 months from today, he will have no objection.

In the facts and circumstances of the case, the prayer of counsel for the appellant for 6 months is allowed, being not objected by the counsel for the respondent, and it is directed that the appellant may retain the possession of the disputed premises for a period of 6 months from today and he shall handover the vacant possession of the premises to the respondent on 1st of March 2006 subject to the conditions that he will pay the rent for this period at the admitted rate and he will fulfill the other obligations under the M.P. Accommodation Control Act, 1961.

The appeal stands disposed of. No costs.

Sd/-
Sunil Kumar Sinha
Judge

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